

JAMES GRAHME, Esq; Appellant, FRANCIS STAMPER, Respondent.

The Appeal is to Reverse an Order of the High Court of Chancery, made the 18th of December, 1693. on Re-bearing of the Cause and the Respondents Plea put in, to the Appellants Bill.

The RESPONDENT's CASE.

THAT the Respondent is a Laceman, and the Appellant for many Years past hath been the Respondent and his Partners Customer ; and in the year, 1688. owed them 318 l. 18 s. 9 d. for Wares sold ; and Appellant refusing to pay them, they brought their Action against him in the Common Pleas, which was tryed in *Michaelmas* Term, 1689. before the late Lord Chief Justice *Pollifsen* ; and the Appellant, in mitigation of Damages, gave in Evidence on the Tryal, that part of the Goods (in question) were for Livery-Lace, delivered for the Use of the late King *James* his Hunts, and to be paid for by him ; but the Respondent, denied that he trusted King *James*, and proved he only trusted the Appellant, who promised Payment thereof. At which Tryal, the Appellant produced his own Books of Accounts, and several Receipts and Acquittances given by the Respondent ; and also the Respondent produced all his Shop-Books, which the Jury viewed and examined, and the Appellant also produced several of his own and King *James* his Servants, and divers other Witnesses were examined on both sides ; and, after a long Tryal, had a Verdict passed for the Respondent for 299 l. 18 s. 9 d. Damages [besides Costs.]

Immediately after the Tryal, the Appellant moved the Court of Common Pleas upon the Affidavits of himself and three other Persons, for a new Tryal ; but all the four Judges there were fully satisfied with the Verdict, and denied a new Tryal. And the Appellant brought a Writ of Error returnable, in the Kings Bench, which in *Easter*-Term, 1690. was argued, and Judgment was affirmed thereon for the Respondent ; but just before the Court affirmed the Judgment, *viz.*

The Appellant exhibited his Bill in Chancery, generally, praying to be Relieved ; alledging the same Matter and no other, as he had before offered on his Defence, at the Tryal at Law ; and had urged, to the Judges, when he moved for a new Tryal (as appears by comparing the Bill in Chancery with the said Affidavits) whereto the Respondent pleaded the said Verdict and Judgments, and therein set forth the whole Series of the Proceedings and Evidence, given at the Tryal at Law, and the motion for a new Tryal and that denied ; and insisted, that after a Verdict upon full Evidence, and a new Tryal denied, and Judgment in a Writ of Error, and intire Damages given the Chancery, ought not to Interpose, especially no new Matter being alledged in the Bill, and therefore prayed to be dismissed.

The Plea was heard, but the Court ordered the Respondent to answer (saving the benefit of the Plea at the hearing of the Cause ;) but the Respondent afterwards Petitioned to have the Plea Re-heard, which was Re heard on the 10th of December, 1690. and then the Court Ordered the Respondent to Answer the Appellants Bill, and to produce upon Oath, all his Books touching the Matters (in question) for the Appellant, and his Agents, to inspect and peruse, and that the Cause should not be further proceeded on till further Order ; and the Respondent and his Partners fully answered the Appellants Bill, and set forth the whole Proceedings at Law, and swore they only trusted the Appellant, and not King *James* ; and that they relied only on the Appellants Promise of Payment, and insisted on their Verdict and Judgment recovered at Law, and denied the whole Equity of the Appellants Bill. So that the Appellant had the Respondents and his Partners Oaths and Denials, and his Bill required no more.

That on the 20th of January following, the Respondent moved the Court to dissolve the Injunction, but the Court Ordered the Respondent to produce the next day, before a Master upon Oath, all his Books touching the Matters (in question) for the Appellant or his Agents to look into (which was done accordingly) and the Injunction Ordered to be dissolved, *nisi Causa*.

That on the 29th of January following, the Appellant shewed Cause, and the Court Ordered, upon the Appellants bringing 326 l. into Court (being the Damages and Costs recovered at Law) the Appellants Bail at Law should be discharged, and continued the Injunction until the hearing of the Cause, and the 326 l. was accordingly paid into Court, which was afterwards moved for to be paid out of Court to the Respondents upon Security, but was denied.

That the Cause proceeded, and the Appellant hath Examined in Chancery all the same Witnesses which he before had Examined at the Tryal, and only two new Witnesses, *viz.* the Countess of *Dorchester* and her Woman, who might have been Examined at the Tryal, and their Evidence is but circumstantial ; and they say nothing as to the particular Goods in Question, but the Respondent only examined Witnesses to prove what Evidence was given at Law, and made no Proofs in Chancery as to the Merit of the Cause, because it would have been a waiver of the said Plea (as advised.)

The Cause was heard, before the last Lords Commissioners, and the Court declared it a Case of Consequence, yet delivered not their Opinions, but ordered to be attended with the Bill, Answer and the Record of the *Posita*, and then they would consider of the Matter: And afterwards the Court was moved to give Judgment ; and, on the 1st of June following, the Court re-heard the Cause, but gave no final Judgment, only declared they had considered of the Case, which (as they alledged) appeared to be a Matter of great consequence, and proper to be stated upon the whole Pleadings, and ordered it to stand referred to Sir *John Hoskins* and Sir *Adam Otley*, Knights, Two of the Masters of that Court, to look into and state the whole Matter of the Bill, Answer, Declaration and Pleadings at Law and in Chancery, and the Books of Account and Proofs taken, in the Cause, and to examine and see what Goods were delivered by the Respondent on the Appellants own Account, and what on the Publick Account ; and what were the Particulars of such Goods, and how Entred in the Respondents Books of Account ; and the said Masters were to look into the Respondents Books of Account, and see how the Entries were made therein for any Goods delivered, and paid for in the years, 1685, 1686 and 1687. And Certifie to the Court how they found the whole Matters ; and after the Masters had made their Report therein, the Court would give their final Judgment in the Cause, and appoint a day for such purpose (but in the mean time the Injunction was continued.)

The Respondent being advised that such the Proceedings in the Cause, were contrary to Law and Equity ; and being aggrieved therein, On the 25th of April, 1693. Petitioned the Lord Keeper to Rehear the said Plea and Cause.

That the Cause and Plea were Re-heard before the Lord Keeper and Mr. Baron *Powell*, who declared their Opinions, That there was no Equity in the Appellants Bill, it being a proper Cause at Law, and received a Tryal there, upon full Evidence on both sides, and no Fraud alledged by the Appellants Bill, they allowed the Plea, and dismissed the Appellants Bill, with Costs to the time only of the Respondents answering the Appellants Bill.

Wherefore the Respondent humbly insists, to have the Fruit and Benefit of the Verdict and Judgments at Law, there being nothing but a plain Matter of Fact four Years since tryed at Law, and not any Equity in the Appellants Bill, alledged ; the Bill in Effect, being only to Arraign the Juries Verdict, and the Opinion of the four Judges ; and the Respondent having positively sworn by his Answer, that he trusted the Appellant only ; and not King *James*, and that the Appellant promised him Payment ; so that if any Provision should be made for Payment of King *James* his Debt, the Respondent can have no benefit by it.

The Respondent *Stamper* hath Sworn in his Answer, That the Appellant threatened he would spend 5000 l. and not leave himself worth a Groat, before he would pay this Debt, and hath kept this poor Tradesman above four years out of his Mony since the Tryal, which would have been very useful in his Trade, and caused him to spend above 500 l. so that the Respondent is almost undone.

The Appellant, as Keeper of the Privy Purse to King *James*, might pay whom he pleased ; and, as Master of his Buck-hounds, might have taken up such Livery Lace for the use of King *James*'s Hunts, as the course was of the proper Tradesmen belonging to the Wardrobe, who must have accepted of King *James*'s Payment ; but the Respondent was a Tradesman at large, and only credited the Appellant (as he hath positively Sworn ;) nor does it appear in the Cause, but that the Appellant may have paid himself.

And therefore humbly hopes the Appeal shall be dismissed with Costs.

JAMES G. A. H. & A. FRANCIS STAMP

The Respondents Case. The Respondents Case. The Respondents Case.

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To be heard the 23rd of January, 1693.
The Respondents Case.
Francis Stamp, Respond.
James Stamp, Ety; Appellant.